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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

December 21, 2015

CERTIFIED RETURN RECEIPT
7014 2870 0001 4231 9319

David Penney
Penney's Gemstones, LLC
2400 East 30 South
PO Box 312
Beaver, Utah 84713-0312

Subject: Proposed Assessment for State Cessation Order CO-2015-17-09 Company, Penney's Gemstones, LLC, Lucin Variscite Mine, S/003/0034, Box Elder County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Penney:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division inspector, Lynn Kunzler, on November 18, 2015. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$3,300.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.

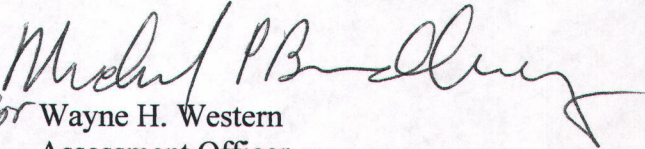


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David Penney
S/003/0034
December 21, 2015

The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment by January 22, 2015. Please remit payment to the Division, mail c/o Sheri Sasaki.

Sincerely,


for Wayne H. Western
Assessment Officer

WHW: eb
Enclosure: Proposed assessment worksheet
cc: Sheri Sasaki, Accounting
Vickie Southwick, Exec. Sec.
David Penney, Operator (ep7art@mac.com)
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COMPANY / MINE Penney's Gemstones, LLC/Lucin Variscite Mine

ASSESSMENT OFFICER Wayne Western

A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today's date?

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

1. What is the event which the violated standard was designed to prevent?
Permit fees provide salary for Division staff. Without the fees the

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

The lack of \$450 will have a minimal impact of the Division. If several operators fail to pay permit fees that could impact the Division by staff reduction.

3. What is the extent of actual or potential damage? ____

ASSIGN DAMAGE POINTS(RANGE 0-25) 10

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

PROVIDE AN EXPLANATION OF POINTS: _____ *The damage is lack of funds for the Division to carry out duties.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS: ____

TOTAL SERIOUSNESS POINTS (A or B) 30

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

NEGLIGENCE.

	Point Range
No Negligence (Was this an inadvertent violation which was unavoidable by the exercise of reasonable care?)	0
Negligent (was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care?)	1-15
Greater Degree of Fault (was this a failure to abate any violation or was economic gain realized by the permittee?)	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS: The Operator has several active and reclaimed mines in Utah and knows that permit fees are required. The Operator has missed three years of payments but keeps the site active.

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures, or violations not abated at the time of assessment)

Has Violation Been Abated? Yes / No

- A. **EASY ABATEMENT** (The operator had onsite, the resources necessary to achieve compliance of the violated standard within the permit area.)

Immediate Compliance	<u>Point Range</u> -11 to -20
(Immediately following the issuance of the NOV)	
Rapid Compliance	-1 to -10
(Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	
Normal Compliance	0
(Operator complied within the abatement period required, or, Operator requested an extension to abatement time)	

- B. **DIFFICULT ABATEMENT** (The operator did not have the resources at hand to achieve compliance, or the submission of plans was required prior to physical activity to achieve compliance.)

Rapid Compliance	<u>Point Range</u> -11 to -20
(Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	
Normal Compliance	-1 to -10
(Operator complied within the abatement period)	
Extended Compliance	0
(Operator complied within the abatement period required, or, Operator requested an extension to abatement time) (Permittee took minimal actions for abatement to stay within the limits of the violation, or the plan submitted for abatement was incomplete.)	

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS: Cessation Order has not be abated. If
abated before December 31, 2015 points will be reevaluated.

V. ASSESSMENT SUMMARY (R647-7-103.3)

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>30</u>
III.	TOTAL NEGLIGENCE POINTS	<u>20</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>50</u>
	TOTAL ASSESSED FINE	<u>\$3,300.00</u>